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MEISELMAN, DENLEA, PACKMAN,
CARTON & EBERZ P.C.
Jeffrey I. Carton (*pro hac vice*)
Jerome Noll (*pro hac vice*)
1311 Mamaroneck Avenue
White Plains, New York 10605
(914) 517-5000

CALDWELL LESLIE & PROCTOR, PC
ROBYN C. CROWTHER, SBN 193840
Crowther@caldwell-leslie.com
ALBERT GIANG, SBN 224332
Giang@caldwell-leslie.com
1000 Wilshire Blvd., Suite 600
Los Angeles, California 90017-2463
Telephone: (213) 629-9040
Facsimile: (213) 629-9022

Attorneys for Plaintiffs
GIORGIO GOMELSKY
and all others similarly situated

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

GIORGIO GOMELSKY,
On behalf of himself and
all others similarly situated

Case No. C-08-04969 JF

STIPULATION AND PROPOSED ORDER

Plaintiffs,

V.

APPLE INC.,

Defendants

Pursuant to Federal Rule of Civil Procedure 15 and Civil Local Rules 7-7(a)(1) and 7-12, the parties, by and through their respective counsel, hereby stipulate as follows:

WHEREAS, Plaintiff filed the complaint in the above-captioned matter on October 30, 2008;

WHEREAS, Defendant filed its Motion to Dismiss and to Strike (the “Motion”) on December 22, 2009;

WHEREAS, the Motion is currently noticed for hearing on March 6, 2009, and no opposition to the Motion has been filed;

WHEREAS, the Plaintiff has given careful consideration to the arguments raised in the Motion and has determined that filing an amended complaint would conserve judicial resources as well as the resources of the parties;

WHEREAS, there have been no previous amendments to the complaint and no responsive pleading has been served;

WHEREAS, the Plaintiff has advised Defendant of his intention to file an amended complaint narrowing the claims asserted and substituting and/or adding named plaintiffs;

WHEREAS, Defendant has agreed that, in light of the foregoing, the hearing on the Motion should be continued until after Defendant has had the opportunity to evaluate the amended complaint;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

1. Plaintiff shall file an amended complaint within thirty (30) days of the date of this Stipulation;

2. The March 6, 2009 hearing date on the Motion shall be adjourned; and

3. Within thirty (30) days following the filing of the amended complaint, Defendant will advise the Court whether it intends to move to dismiss the amended complaint, or to answer the amended complaint in which case the Motion will be withdrawn.

Dated: January 29, 2009

Caldwell Leslie & Proctor, PC

By: /s/ Robyn C. Crowther
Robyn C. Crowther
Attorneys for Plaintiff

Dated: January 29, 2009

Morrison & Foerster LLP

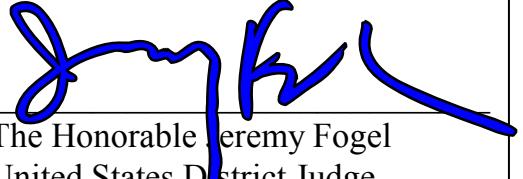
By: /s/ Andrew D. Muhlbach
Andrew D. Muhlbach
Attorneys for Defendant

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2 *Filer's Attestation:* Pursuant to General Order No. 45.1, I, Robyn C. Crowther attest that I
obtained concurrence in the filing of this document from the other signatories.
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4 **PROPOSED ORDER**
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6 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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8 Dated: January 30, 2009
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11 The Honorable Jeremy Fogel
12 United States District Judge
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